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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/517,490

12/10/2004

Iwao Yamazaki

04173.0461-00000

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7590

01/26/2010

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP

901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

HOEKSTRA, JEFFREY GERBEN

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

01/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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| <p align="center">Advisory Action Before the Filing of an Appeal Brief</p> | <p>Application No. 10/517,490</p> | <p>Applicant(s) YAMAZAKI ET AL.</p> | |
| | <p>Examiner JEFFREY G. HOEKSTRA</p> | <p>Art Unit 3736</p> | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736

/Jeffrey G Hoekstra/
Examiner, Art Unit 3736

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed 01/14/2010 have been considered and do not place the application in condition for allowance. The Examiner maintains the final rejection mailed 10/23/2009 and in response notes the following:

Absent any special definition in the instant Specification upon which Applicant does not appear to rely, the claims are being treated on the merits with the broadest reasonable interpretation of the terms therein, consistent with the instant disclosure. The term "belt" may be plainly defined as "an elongated region having distinctive properties or characteristics". The elongated region defined by elements 1 and 9 of Kawanishi may be reasonably interpreted to be a "belt" as broadly as claimed.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the belt can be used with wrapping on the body", "the belt is configured to be in contact with, disposed about, and encircle the abdominal portion of the users body" or the like) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Examiner notes that it is the cited electrodes 3a, 3b, 3c, and 3d that are "configured to contact a surface of the body". The claims does not expressly require that the "belt configured to contact a surface of the body"; conversely, it appears the claim positively recites "a plurality of pairs of electrodes configured to contact a surface of the body", wherein the plurality of electrode pairs are included in "a belt". Should Applicant desire that the "belt" is "configured to contact a surface of the body", Applicant is encouraged to positively recite the limitation in the claims.

In response to applicant's arguments regarding the "means for calculating at least one of values of bone weight and muscular weight", the Examiner notes applicant apparently mischaracterizes and/or narrowly construes Kawanishi's disclosure. Kawanishi discloses the claimed "means for calculating" as cited in the rejection. Based on the body impedance measured using a multi-frequency current and the personal information input into the display (column 7 line 1-66), Kawanishi explicitly states "the muscle mass is obtained" (column 7 line 45). Muscle mass may be reasonably interpreted to include at least "muscular weight" as broadly as claimed.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "calculating both bone weight and muscular weight") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Conversely the claims merely require calculating a single one of either bone weight or muscular weight.